

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

SUZANNE DEGNEN, D.M.D., P.C.
d/b/a SUNSET TOWER FAMILY
DENTISTRY,

Plaintiff,

v.

DENTIS USA CORPORATION d/b/a
DENTIS USA,

ELLIE KIM,

and

JOHN DOES 1-10.

Defendants.

Case No. 4:17-cv-00292-CEJ

**DEFENDANT DENTIS USA CORPORATION'S ANSWER
AND AFFIRMATIVE DEFENSES**

COMES NOW Defendant Dentis USA Corporation d/b/a Dentis USA ("**Dentis USA**"), by and through its undersigned counsel, and for its Answer and Affirmative Defenses to the Plaintiff's Class Action Junk-Fax Petition ("Petition") states as follows:

PARTIES, JURISDICTION, AND VENUE

1. Dentis USA is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1, and therefore denies them.
2. Dentis USA admits the allegations of Paragraph 2.
3. Dentis USA admits the allegations of Paragraph 3.
4. Dentis USA admits the allegations of Paragraph 4.
5. Dentis USA admits the allegations of Paragraph 5.

6. Dentis USA is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6, and therefore denies them.

7. Paragraph 7 contains a legal contention, characterization, and/or legal conclusions to which no response is required. To the extent a response is required, Dentis USA denies the allegation set forth in Paragraph 7 of the Petition.

8. Paragraph 8 contains a legal contention, characterization, and/or legal conclusions to which no response is required. To the extent a response is required, Dentis USA denies the allegation set forth in Paragraph 8 of the Petition.

THE FAX

9. Dentis USA denies the allegations of Paragraph 9.

10. Dentis USA is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10, and therefore denies them.

11. Dentis USA is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11, and therefore denies them.

12. Paragraph 12 contains a legal contention, characterization, and/or legal conclusions to which no response is required. To the extent a response is required, Dentis USA denies the allegation set forth in Paragraph 12 of the Petition.

13. Dentis USA denies the allegations of Paragraph 13.

14. Dentis USA denies the allegations of Paragraph 14.

15. Dentis USA is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 15, and therefore denies them.

16. Paragraph 16 contains a legal contention, characterization, and/or legal conclusions to which no response is required. To the extent a response is required, Dentis USA denies the allegation set forth in Paragraph 16 of the Petition.

17. Dentis USA denies the allegations of Paragraph 17.

18. Dentis USA denies the allegations of Paragraph 18.

19. Paragraph 19 contains a legal contention, characterization, and/or legal conclusions to which no response is required. To the extent a response is required, Dentis USA denies the allegation set forth in Paragraph 19 of the Petition.

20. Paragraph 20 contains a legal contention, characterization, and/or legal conclusions to which no response is required. To the extent a response is required, Dentis USA denies the allegation set forth in Paragraph 20 of the Petition.

21. Paragraph 21 contains a legal contention, characterization, and/or legal conclusions to which no response is required. To the extent a response is required, Dentis USA denies the allegation set forth in Paragraph 21 of the Petition.

22. Paragraph 22 contains a legal contention, characterization, and/or legal conclusions to which no response is required. To the extent a response is required, Dentis USA denies the allegation set forth in Paragraph 22 of the Petition.

23. Paragraph 23 contains a legal contention, characterization, and/or legal conclusions to which no response is required. To the extent a response is required, Dentis USA denies the allegation set forth in Paragraph 23 of the Petition.

24. Paragraph 24 contains a legal contention, characterization, and/or legal conclusions to which no response is required. To the extent a response is required, Dentis USA denies the allegation set forth in Paragraph 24 of the Petition.

25. Dentis USA denies the allegations set forth in Paragraph 25.

26. Paragraph 26 contains a legal contention, characterization, and/or legal conclusions to which no response is required. To the extent a response is required, Dentis USA denies the allegation set forth in Paragraph 26 of the Petition.

27. Paragraph 27 contains a legal contention, characterization, and/or legal conclusions to which no response is required. To the extent a response is required, Dentis USA denies the allegation set forth in Paragraph 27 of the Petition.

28. Paragraph 28 contains a legal contention, characterization, and/or legal conclusions to which no response is required. To the extent a response is required, Dentis USA denies the allegation set forth in Paragraph 28 of the Petition.

29. Paragraph 29 contains a legal contention, characterization, and/or legal conclusions to which no response is required. To the extent a response is required, Dentis USA denies the allegation set forth in Paragraph 29 of the Petition.

30. Paragraph 30 contains a legal contention, characterization, and/or legal conclusions to which no response is required. To the extent a response is required, Dentis USA denies the allegation set forth in Paragraph 30 of the Petition.

31. Paragraph 31 contains a legal contention, characterization, and/or legal conclusions to which no response is required. To the extent a response is required, Dentis USA denies the allegation set forth in Paragraph 31 of the Petition.

32. Paragraph 32 contains a legal contention, characterization, and/or legal conclusions to which no response is required. To the extent a response is required, Dentis USA denies the allegation set forth in Paragraph 32 of the Petition.

CLASS ACTION ALLEGATIONS

33. Dentis USA admits that Plaintiff purports to bring this class action on behalf of a class of persons, but denies the validity of Plaintiff's claims, denies that Plaintiff has established or can establish an appropriate class for this action, denies that Plaintiff is an appropriate class representative for the purported class, and denies that this matter should be proceed as a class action.

34. Paragraph 34 contains a legal contention, characterization, and/or legal conclusions to which no response is required. To the extent a response is required, Dentis USA denies the allegation set forth in Paragraph 34 of the Petition.

35. Paragraph 35 contains a legal contention, characterization, and/or legal conclusions to which no response is required. To the extent a response is required, Dentis USA denies the allegation set forth in Paragraph 35 of the Petition.

36. Paragraph 36 contains a legal contention, characterization, and/or legal conclusions to which no response is required. To the extent a response is required, Dentis USA denies the allegation set forth in Paragraph 36 of the Petition.

37. Paragraph 37 contains a legal contention, characterization, and/or legal conclusions to which no response is required. To the extent a response is required, Dentis USA denies the allegation set forth in Paragraph 37 of the Petition.

38. Paragraph 38 contains a legal contention, characterization, and/or legal conclusions to which no response is required. To the extent a response is required, Dentis USA denies the allegation set forth in Paragraph 38 of the Petition.

39. Paragraph 39 contains a legal contention, characterization, and/or legal conclusions to which no response is required. To the extent a response is required, Dentis USA denies the allegation set forth in Paragraph 39 of the Petition.

40. Paragraph 40 contains a legal contention, characterization, and/or legal conclusions to which no response is required. To the extent a response is required, Dentis USA denies the allegation set forth in Paragraph 40 of the Petition.

41. Paragraph 41 contains a legal contention, characterization, and/or legal conclusions to which no response is required. To the extent a response is required, Dentis USA denies the allegation set forth in Paragraph 41 of the Petition.

42. Paragraph 42 contains a legal contention, characterization, and/or legal conclusions to which no response is required. To the extent a response is required, Dentis USA denies the allegation set forth in Paragraph 42 of the Petition.

43. Paragraph 43 contains a legal contention, characterization, and/or legal conclusions to which no response is required. To the extent a response is required, Dentis USA denies the allegation set forth in Paragraph 43 of the Petition.

44. Paragraph 44 contains a legal contention, characterization, and/or legal conclusions to which no response is required. To the extent a response is required, Dentis USA denies the allegation set forth in Paragraph 44 of the Petition.

45. Paragraph 45 contains a legal contention, characterization, and/or legal conclusions to which no response is required. To the extent a response is required, Dentis USA denies the allegation set forth in Paragraph 45 of the Petition.

WHEREFORE, Dentis USA prays for judgment from this Court as follows: that Plaintiff, and putative members of the purported class, take nothing by this action; that the

Petition be dismissed with prejudice and that judgment be entered against Plaintiff, and putative members of the purported class, and in favor of Dentis USA on each cause of action; the Dentis USA be awarded their attorneys' fees and costs of suit herein to the extent permitted under applicable law; and such other and further relief as the Court deems appropriate and proper.

AFFIRMATIVE DEFENSES

1. As a separate and distinct affirmative defense, Dentis USA states that the Petition, and each and every alleged cause of action therein, fails to state facts sufficient to constitute a cause of action upon which relief can be granted.

2. As a separate and distinct affirmative defense, Dentis USA states that Plaintiff and the putative class members have failed, refused and/or neglected to mitigate or avoid the damages complained of in the Petition, if any.

3. As a separate and distinct affirmative defense, Dentis USA states that the Petition and each and every alleged cause of action therein is barred, in whole or in part, by the equitable doctrine of laches.

4. As a separate and distinct affirmative defense, Dentis USA states that Plaintiff and the putative class members is estopped by their conduct from asserting each of the causes of action upon which they seek relief.

5. As a separate and distinct affirmative defense, Dentis USA states that the Petition and each and every alleged cause of action therein is barred by the doctrine of waiver.

6. As a separate and distinct affirmative defense, Dentis USA states that the Petition, and each and every alleged cause of action therein is barred, in whole or in part, because Plaintiff and the putative class members consented to the conduct about which they now complain.

7. As a separate and distinct affirmative defense, Dentis USA states that Plaintiff and the putative class members have not suffered any losses and Dentis USA have not been unjustly enriched as a result of any action or inaction by Dentis USA or their agents. Plaintiff is therefore not entitled to any disgorgement or restitution.

8. As a separate and distinct affirmative defense, Dentis USA states that Plaintiff is barred, or limited, by the applicable statute of limitations. Further, the applicability of the statutes of limitations require individualized determinations for each putative member of the purported class, thereby precluding class-wide resolution.

9. As a separate and distinct affirmative defense, Dentis USA states that Plaintiff's claims, and each of them, brought on behalf of himself and the putative members of the purported class as set forth in the Petition, or some of the, in whole or in part, may not be litigated in court because some or all of said claims is subject to individual, mandatory, final and binding arbitration.

10. As a separate and distinct affirmative defense, Dentis USA has at all times acted in good faith and reasonable grounds for believing that they had not violated Missouri or federal law.

11. As a separate and distinct affirmative defense, Dentis USA states that each of Plaintiff's claims, and each of them, brought on behalf of itself and the putative members of the purported class as set forth in the Petition, is barred in whole or in part, under the doctrines of waiver, laches, estoppel, ratification, acquiescence, or unclean hands.

12. As a separate and distinct affirmative defense, Dentis USA states that each purported cause of action in the Petition, or some of the causes of action, is barred, or recovery should be reduced, pursuant to the doctrine of avoidable consequences.

13. As a separate and distinct affirmative defense, Dentis USA states that the Petition, and each cause of action thereof, is barred – or the damages flowing there from reduced – because Plaintiff and putative members of the purported class as set forth in the Petition failed to notify Dentis USA of the alleged statutory violations at the time such violations allegedly occurred, which prevented Dentis USA from taking any action to remedy such alleged violations.

14. As a separate and distinct affirmative defense, Dentis USA states that assuming, *arguendo*, that Plaintiff and the putative class members is entitled to additional damages, Dentis USA have not willfully or intentionally failed to pay any such additional compensation to Plaintiffs and the putative class members, to justify any awards of damages, penalties or fees.

15. As a separate and distinct affirmative defense, Dentis USA states that the Petition and each cause of action set forth therein is barred because Plaintiff failed to timely and completely exhaust the requisite administrative remedies, statutory, and/or contractual remedies available to them prior to commencing this action.

16. As a separate and distinct affirmative defense, Defendant states that Plaintiff fails to state a claim against Dentis USA upon which class counsel should be awarded reasonable attorneys' fees and all expenses of this action and that Dentis USA be required to pay the costs and expenses of class notice and claim administration.

17. As a separate and distinct affirmative defense, Defendant states that Plaintiff lacks standing to bring their claims as to all or a portion of the claims alleged in the Petition.

18. As a separate and distinct affirmative defense, Dentis USA states that Plaintiff's proposed class is an impermissible fail-safe class and, therefore, the class allegations should be stricken.

19. As a separate and distinct affirmative defense, Dentis USA states that this suit may not be properly maintained as a class action because: (1) Plaintiff has failed to plead, and cannot establish the necessary procedural elements for class treatment; (2) a class action is not an appropriate method for the fair and efficient adjudication of the claims described in the Petition; (3) common issues of fact or law do not predominate; to the contrary, individual issues predominate; (4) Plaintiff's claims is not representative or typical of the claims of the putative class; (5) Plaintiff is not a proper class representative; (6) the named plaintiffs and alleged putative class counsel is not adequate representatives for the alleged putative class; (7) Plaintiff cannot satisfy any of the requirements for class action treatment, and class action treatment is neither appropriate nor constitutional; (8) there is not a well-defined community of interest in the questions of law or fact affecting Plaintiff and the members of the alleged putative class; and (9) the alleged putative class is not ascertainable, nor is its members identifiable.

20. As a separate and distinct affirmative defense, Dentis USA opposes class certification and disputes the propriety of class treatment. If the Court certifies a class in this case over Dentis USA's objections, then Dentis USA asserts the affirmative defenses set forth herein against each and every member of the certified class.

21. As a separate and distinct affirmative defense, Dentis USA states that the adjudication of the claims of the putative class through generalized classwide proof violates Dentis USA's right to trial by jury guaranteed by the United States and Missouri Constitutions.

22. As a separate and distinct affirmative defense, Dentis USA states that, to the extent that Plaintiffs claim penalties, such claims must comport with the due process requirements of State Farm v. Campbell, 538 U.S. 408 (2003) and subsequent case law regarding the same issue.

23. As a separate and distinct affirmative defense, Dentis USA states that Plaintiff's claims, and each of them, brought on behalf of himself and the putative members of the purported class as set forth in the Petition, if allowed to be tried upon or with so-called representative evidence, would violate the procedural and substantive Due Process clauses of the state and federal Constitutions.

24. As a separate and distinct affirmative defense, Dentis USA states Plaintiff's claims, and each of them, brought on behalf of himself and the putative members of the purported class as set forth in the Petition, that seek the imposition of multiple awards of damages, penalties and/or incentive award for the same basic wrongs is unconstitutional in that such relief violates the Due Process clauses of the state and federal Constitutions.

25. As a separate and distinct affirmative defense, Dentis USA states that Plaintiffs and the putative class members is not entitled to equitable relief insofar as they have adequate remedies at law.

26. As a separate and distinct affirmative defense, Dentis USA states that the Petition fails to properly state a claim for injunctive relief.

27. As a separate and distinct affirmative defense, Dentis USA states that to the extent Plaintiff and the putative class members recover penalties in this action, they cannot recover punitive damages. As a separate and distinct affirmative defense, Dentis USA states they do not presently know all facts concerning the conduct of Plaintiff and its claims sufficient to state all affirmative defenses at this time. Dentis USA will seek leave of this Court to amend this Answer should it later discover facts demonstrating the existence of additional affirmative defenses.

28. The statutory damages provisions of the TCPA violate the safeguards guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments of the Constitution of the United States,

in addition to violating the due process clause of the Fifth and Fourteenth Amendments, because they constitute excessive fines and are grossly disproportionate to any actual harm that may be suffered by Plaintiff.

29. To the extent Plaintiff sustained damages in this matter, which Dentis USA specifically denies, then said damages were caused by the conduct of other entities or parties over whom Dentis USA had no control or right of control.

30. Plaintiff's Petition, and each cause of action alleged therein, is barred because the relief sought by Plaintiff would, if granted, unjustly enrich Plaintiff.

WHEREFORE, Dentis USA prays for judgment from this Court as follows: that Plaintiff, and putative members of the purported class, take nothing by this action; that the Petition be dismissed with prejudice and that judgment be entered against Plaintiff, and putative members of the purported class, and in favor of Dentis USA on each cause of action; the Dentis USA be awarded their attorneys' fees and costs of suit herein to the extent permitted under applicable law; and such other and further relief as the Court deems appropriate and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was filed via the ECF system, on this 2nd day of February 2017, for service upon the following:

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